

1 BEFORE THE TENNESSEE BOARD FOR LICENSING CONTRACTORS
2 FOR THE STATE OF TENNESSEE

3 IN THE MATTER OF:)
4)
4 Lourdes B. Sierra) Docket No. 12.14-106530A
129 Jackson Lake Drive)
5 Franklin, Tennessee 37069)

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EXCERPT OF PROCEEDINGS

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March 31, 2010

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BEFORE: The Honorable Thomas Stovall,
Administrative Judge

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15 APPEARANCES:

16 For the State: Mr. Michael D. Driver
Asst. General Counsel
TN Dept. of Commerce & Insurance
17 500 James Robertson Parkway
Davy Crockett Tower
18 Nashville, TN 37243-0569

19 For Ms. Sierra: Pro se

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WILMA O. HUTCHISON
Professional Court Reporter
400 Rivercrest Court
Nashville, TN 37214
(615) 889-6288

1 The aforementioned cause came on to be heard on
2 March 31, 2010, beginning at approximately 9:00 a.m., at the
3 Andrew Johnson Building, Third Floor Conference Room,
4 710 James Robertson Parkway, Nashville, Tennessee, before
5 Chairman Keith Whittington and board members Mr. Ernest M.
6 Owens, Mr. Ronnie Tickle, Mr. Marvin Sandrell, and Mr. Jerry
7 Hayes. Also present was Ms. Carolyn Lazenby, Executive
8 Director, and Ms. Nicole Canter, Paralegal.

9 The following proceedings were had, to wit:

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DELIBERATIONS BY THE BOARD

MR. OWENS: I agree.

THE CHAIRMAN: Marvin?

MR. TICKLE: I agree with Jerry.

THE CHAIRMAN: So it's unanimous that the counts 1, 2, 4, 5, 6, 7, 8, and 9 of the findings of fact. The Board does not agree of fact on item No. 3 of the proposed Having said that --

ADMINISTRATIVE JUDGE: Mr. Chairman, do I

1 understand it's the Board's wishes that you are deleting all
2 of No. 3, or are you just deleting portions of No. 3? Because
3 as I understood Mr. Hayes' statement, it sounded as if perhaps
4 the first sentence was problematic.

5 MR. TICKLE: That's correct, sir. That's
6 what we're agreeing to. That's what I'm agreeing to, because
7 \$15,000 has not been proven that --

8 ADMINISTRATIVE JUDGE: So the first
9 sentence would need to be removed, but the rest of No. 3 is
10 correct. Is that what you all are saying?

11 MR. OWENS: Yes, sir.

12 ADMINISTRATIVE JUDGE: Do you understand
13 that, Mr. Driver?

14 MR. DRIVER: I do, Your Honor.

15 THE CHAIRMAN: I realize how I worded that
16 made it look like we were striking No. 3, but how he worded it
17 was the 15,000.

18 ADMINISTRATIVE JUDGE: All right.

19 THE CHAIRMAN: At this time it's up to the
20 Board to look at the State's proposed conclusions of law.

21 ADMINISTRATIVE JUDGE: Mr. Chairman, I
22 think perhaps, just for clarity sake, you should have a motion
23 and then adopt the proposed findings of fact as modified in
24 paragraph 3.

25 THE CHAIRMAN: All right. At this time

1 I'll entertain a motion.

2 MR. HAYES: I so move that we adopt the
3 State's proposed findings of fact except the first sentence in
4 No. 3.

5 MR. TICKLE: Second.

6 THE CHAIRMAN: We have a motion and a
7 second. Is there any discussion on the motion? The motion
8 states that we adopt the State's proposed findings of fact
9 with the exception of the first sentence in item No. 3. All
10 in favor please say aye? Any opposed likewise? The motion
11 carries. Now, do we move on into the conclusions?

12 ADMINISTRATIVE JUDGE: Yes, sir.

13 THE CHAIRMAN: Okay. It's the Board's
14 responsibility now to determine what law has actually been
15 violated under these findings of fact that the State has
16 presented. Those conclusions of law are stated. I guess I
17 would be open to discussion from any board members as to how
18 they feel about these conclusions of law 1, 2, 3, and 4.

19 MR. TICKLE: The conclusion of law as
20 stated in our handbook appears to be correct, the 2007
21 edition.

22 THE CHAIRMAN: Do we adopt the conclusions
23 of law, or do we --

24 ADMINISTRATIVE JUDGE: Yes, sir. You need
25 to go through the same exercise you did on the proposed

1 findings. In other words, you need to decide whether or not
2 the facts in this case constitute a violation of the statutes
3 as Mr. Driver has set forth in his proposed findings. So I
4 would suggest you vote to adopt or reject the violations of
5 the statutes as set out in the order, the proposed findings.

6 THE CHAIRMAN: When we adopt these
7 conclusions of law, does that need to include the penalty?

8 ADMINISTRATIVE JUDGE: That would be the
9 next step.

10 THE CHAIRMAN: That's the next step.

11 ADMINISTRATIVE JUDGE: The first step is
12 just to determine whether or not there's been a violation of
13 the law. Then after you make that decision, the final
14 decision you need to make is what, if any, penalty you're
15 going to impose to Ms. Sierra.

16 THE CHAIRMAN: I'll entertain a motion on
17 the State's proposed conclusions of law as to whether or not
18 there has been a violation of our State Contractors Licensing
19 Law.

20 MR. TICKLE: I'd like to make a motion we
21 accept items 1, 2, 3, and 4 as submitted by the State.

22 MR. OWENS: Second.

23 THE CHAIRMAN: I have a motion and a
24 second. Is there any discussion? The motion being that we
25 are to accept items 1, 2, 3, and 4 of the case of the State's

1 proposed conclusions of law. All in favor signify by saying
2 aye? Opposed likewise? The motion carries.

3 Now comes the really difficult part of the
4 case, in my opinion, and that is the penalty, the remedy or
5 the discipline part of the case. I would be willing to
6 open -- or I am opening discussions as to how the board
7 members feel as though we should proceed with this part of the
8 case. What are your feelings on the penalty? I think the
9 monetary amount of this should be something you weigh in your
10 decision or what you feel like. I as Chair can't make a
11 motion, so I really think that you need to consider that. I
12 really can't advise you as to past decisions the Board has
13 made.

14 MR. HAYES: Well, I personally think it's
15 obvious she was -- whether it was intentional or not, she was
16 acting as the contractor on this project, whether she was
17 doing it because she was good friends with the Bodys or she
18 was doing it because she was trying to be a contractor. In
19 saying that, I think the Bodys were willing participants up
20 until they had the confusion over the workmanship. If they
21 hadn't had that, we wouldn't be sitting here today. But there
22 is a violation, and we are sitting here today, and I propose a
23 thousand dollar fine and move on.

24 MR. TICKLE: I second that motion.

25 THE CHAIRMAN: We have a motion and a

1 second on the floor that for the penalty of the case that
2 there be a \$1,000 civil penalty. Is there any discussion of
3 the motion?

4 MR. TICKLE: I think we need to be sure
5 that everyone understands and that Ms. Sierra understands that
6 if, in fact, she decides to do this again, that she has to
7 have a contractor's license, not a designer as such but a
8 contractor's license as such, and she can get the minimum up
9 to \$72,000 for four years, I believe, and then go and get a
10 bigger one, if she so desires, if that's what she's planning
11 on doing. I think she stated that she's had all the fun she
12 can handle right now. But, Mr. Chair, if you would make
13 that ...

14 THE CHAIRMAN: Is there any other
15 discussion? Again, the motion on the floor is that the
16 penalty -- since we've established the findings of fact and
17 the conclusions of law, that we assess a civil penalty of
18 \$1,000. All in favor, please say aye? Opposed, likewise?
19 The motion carries. Now do we give a policy reason?

20 ADMINISTRATIVE JUDGE: Yes, sir.

21 THE CHAIRMAN: Is that done in the form of
22 a motion?

23 ADMINISTRATIVE JUDGE: Typically someone
24 would just state it, and then you would adopt it.

25 THE CHAIRMAN: And the Chair?

1 ADMINISTRATIVE JUDGE: The Chair can, yes,
2 sir.

3 THE CHAIRMAN: Okay. The policy of this
4 Board has always been to frown upon unlicensed contractors'
5 activity. It's a matter that the Board takes very, very
6 seriously. Damages have been done, people have been hurt
7 throughout the years of unlicensed contractor activity.
8 Whether or not it's intentional, the Board really has a hard
9 time being able to determine that.

10 In our findings and the facts of this
11 case, we have determined that you have violated sections
12 62-6-103 where it states that "any person, firm, or
13 corporation engaged in contracting shall be required to submit
14 evidence of qualifying to engage in contracting and shall be
15 licensed as provided in this part. It is unlawful for any
16 person, firm, or corporation to engage in or offer to engage
17 in contracting unless the person, firm, or corporation has
18 been duly licensed under this part." Should you decide -- is
19 that part of the policy?

20 ADMINISTRATIVE JUDGE: I think that's it,
21 and you all --

22 THE CHAIRMAN: That should be good enough?

23 ADMINISTRATIVE JUDGE: If you want to say
24 anything else to her off the record, that will be fine.

25 THE CHAIRMAN: Then that's my policy

1 statement. I'll accept a motion to accept the policy

2 statement.

3 MR. HAYES: So move.

4 MR. TICKLE: Second.

5 MR. OWENS: Second.

6 THE CHAIRMAN: We've got a motion and

7 second. Is there any discussion? All in favor say aye?

8 Opposed likewise? The motion carries.

9 ADMINISTRATIVE JUDGE: Very good. If

10 there's nothing further in this matter, we will stand

11 adjourned. Thank you very much.

12 (Whereupon, the hearing was concluded.)

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CERTIFICATE

STATE OF TENNESSEE)
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COUNTY OF DAVIDSON)

I, WILMA O. HUTCHISON, Court Reporter and Notary,
State of Tennessee at Large, do hereby certify that I was
authorized to and did record the foregoing Excerpt of
Proceedings in this cause at the time and place aforesaid, and
that the transcript thereof is a true and accurate record of
the said Excerpt of Proceedings, to the best of my knowledge
and belief.

IN WITNESS WHEREOF, I have hereunto affixed my hand
and the seal of my office, this the 5th day of April 2010.

Wilma O. Hutchison
Court Reporter &
Notary Public at Large
State of Tennessee

MY COMMISSION EXPIRES:
May 8, 2012.